

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE:

B-217319.2

DATE: April 22, 1985

MATTER OF:

Parkey & Partner Architects--Claim
for Costs

DIGEST:

Where agency had reasonable basis to cancel and resolicit requirement for architectural and engineering services, there is no legal basis for allowing an unsuccessful offeror to recover its proposal preparation costs.

Parkey & Partners Architects (Parkey) has filed a claim for \$35,000 in "contract preparation costs" in connection with the cancellation and resolicitation of project No. ITX81003 by the General Services Administration (GSA) covering architectural and engineering services for conversion and modernization work at the United States Post Office-Terminal Annex in Dallas, Texas. Our Office had previously considered and denied Parkey's protest of GSA's cancellation and resolicitation for the required services in Parkey & Partners Architects, B-217319, Mar. 22, 1985, 85-1 C.P.D. ¶ _____.

We deny Parkey's claim.

In our prior decision, we indicated that a contracting agency has broad discretion to determine when it is appropriate to cancel a procurement conducted under the Brooks Act (41 U.S.C. § 541 et seq. (1982)) procedures for professional architectural and engineering services and may do so by establishing a reasonable basis for the cancellation. We concluded that since the scope of the initial procurement had changed significantly after the evaluation and selection of a prospective contractor, and since the wrong small business size standard was used in the initial solicitation for set-aside purposes, GSA had a reasonable basis for the cancellation and resolicitation.

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Parkey has neither alleged nor shown any error of fact or law that would support a request for reconsideration of our initial decision on its protest under section 21.12 of our Bid Protest Regulations. 4 C.F.R. part 21 (1985). Rather, Parkey claims that over a 2-1/2-year period, during which it met repeatedly with GSA's design team to discuss the scope of work on the contract, it expended in excess of \$35,000 in man-hours and resources with the expectation of performing the work. Parkey claims these "contract preparation costs" because it incurred them "with the expectation of performing the work."

The recovery of proposal preparation costs is based on the theory that in issuing a solicitation the government enters into an implied contract with offerors that their proposals will be fairly and honestly considered. Unified Industries Inc., B-212996.2, Aug. 1, 1984, 84-2 C.P.D. ¶ 139. This implied contract may be breached, and the offeror thus entitled to recover its costs, where the record indicates both that the agency's actions were arbitrary and capricious and that these actions prejudiced the claimant. Unified Industries Inc., B-212996.2, supra, citing Amram Nowak Assoc., Inc., 56 Comp. Gen. 448 (1977), 77-1 C.P.D. ¶ 219.

In view of our denial of Parkey's protest, there is no basis for us to conclude that the government acted improperly here. Therefore, there is no legal basis for allowing Parkey's claim for proposal preparation costs. The claim is denied. See Power Equipment, Inc., B-213428.3, Oct. 22, 1984-2 C.P.D. ¶ 427.

Harry D. Van Cleave
for Comptroller General
of the United States